

HOUSE BILL NO. 284

INTRODUCED BY GILLAN, BUZZAS

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PEACE OFFICER DOES NOT NEED PROBABLE CAUSE TO BELIEVE THAT A PERSON WAS DRIVING UNDER THE INFLUENCE IN ORDER TO REQUEST A TEST OF A PERSON'S BLOOD OR BREATH FOR THE PURPOSE OF DETERMINING ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL OR DRUGS IN THE PERSON'S BODY WHEN THE PERSON HAS BEEN INVOLVED IN A MOTOR VEHICLE ACCIDENT OR COLLISION RESULTING IN SERIOUS BODILY INJURY OR DEATH; AND AMENDING SECTION 61-8-402, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle;

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death; or

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of



1 refusal is considered not to have withdrawn the consent provided by subsection (1).

2 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer
3 as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the
4 department, immediately seize the person's driver's license. The peace officer shall immediately forward the
5 license to the department, along with a report certified under penalty of law stating which of the conditions set
6 forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to
7 submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the
8 department shall suspend the license for the period provided in subsection (6).

9 (5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
10 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
11 issuance, and shall provide the driver with written notice of the license suspension or revocation and the right
12 to a hearing provided in 61-8-403.

13 (6) The following suspension and revocation periods are applicable upon refusal to submit to one or
14 more tests:

15 (a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

16 (b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the
17 records of the department, a revocation of 1 year with no provision for a restricted probationary license.

18 (7) A nonresident driver's license seized under this section must be sent by the department to the
19 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
20 more tests.

21 (8) The department may recognize the seizure of a license of a tribal member by a peace officer acting
22 under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating
23 a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation
24 requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred
25 within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department
26 under this subsection is not reviewable under 61-8-403.

27 (9) A suspension under this section is subject to review as provided in this part.

28 (10) This section does not apply to blood and breath tests, samples, and analyses used for purposes
29 of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an
30 offense not in this part."

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